

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Establishment - AP Horticulture Department - WP No.3171/2006 filed by the Government of Andhra Pradesh in the Hon'ble High Court of Andhra Pradesh against the orders dated 17.2.2004 of A.P.Administrative Tribunal, Hyderabad in O.A.No.5274/2000 - Judgment of Hon'ble High Court dated 23.7.2008 in WP No.3171/2006- Implementation - Orders - Issued.

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AGRICULTURE AND COOPERATION (HORTI.) DEPARTMENT

G.O.Ms.No.66

Dated : 18-2-2009.
Read the following:-

1. G.O.Ms.No.239, F&A (Agri.V) Dept., dt. 7.4.1989.
2. From COH Proceedings No.Estt.(1)427/89,dt.6.5.1990 and dt.11.6.1990
3. From the COH Proceedings ROC No.Estt.(4) 3404/92, dated 7.4.1994.
4. Hon'ble APAT Judgement , dt. 17.2.2004, in OA No.5274/2000.
5. From COH, AP.,Hyd. Lr.No. Estt.1-533/96, dt.3.5.2004
6. Govt.DO.Letter No. 14803/Horti./A1/2000-12, dt. 26.12.2005. addressed to Advocate-General, High Court of AP.,Hyd.
7. Hon'ble AP High Court Judgement dt. 23.7.2008 in WP No. 3171/2006.
8. From Advocate-General, AP High Court,Hyd. Lr.No. 622/2008, dt.24.7.2008.
9. From the COH, AP.,Hyd. Lr.No.Estt.1-533/96, dt. 7.8.2008.
10. Reptn. From AP Horticulture Officers Association, dt.17.12.2008.
11. Govt. Letter No.14803/Horti./A1/2000, dt.3.1.2009 addressed to Advocate-on-Records, SCI, New Delhi.
12. Govt. Letter No. 14803/Horti./A1/2000, dt. 11.2.2009 addressed to the Advocate-on-Records, SCI, New Delhi.

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ORDER:-

In the GO 1st read above, orders were issued constituting the Selection Committee for recruitment of Horticulture Officers. Accordingly, the Selection Committee were selected certain candidates for appointment to the post of Horticulture Officers purely on temporary basis.

2. In the reference 2nd read above, the Commissioner of Horticulture, had issued appointment orders to the candidates who were selected during the year 1990 under Rule 10(a) (i) of AP State and Subordinate Service Rules and subsequently issued appointment orders for the candidates selected during the years 1991, 1992, 1993 and 1994. Further, the Commissioner of Horticulture, Andhra Pradesh, Hyderabad, had regularized the services of above said Horticulture Officers on 7.4.1994 from the date of their initial appointment and they were also placed on probation from the date of their initial appointment for a period of two years in a continuous period of three years and they were directed to pass departmental tests during the period of probation.

3. Aggrieved by the orders, issued by the Commissioner of Horticulture, Andhra Pradesh, Hyderabad, certain Horticulture Officers appointed during the period 1990-1994 approached the AP Administrative Tribunal and filed an O.A No. 5274/2000 and batch cases in the A.P. Administrative Tribunal . The main contention of the

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applicants on the above said O.As is to (a) direct the respondents to forth with prepared and communicate state wide inter-se- seniority list of Horticulture Officers taking into account the date of regularization of applicants and others issued in Proceedings No. Roc No.Estt.I(1)533/96, dt. 18.7.2000 and (b) direct the respondents to consider and promote the applicants to the post of Assistant Director of Horticulture as per the date of regularization issued in proceedings Memo No. Roc.No.Estt.I(1)533/96, dt. 18.7.2000, pending preparation of seniority list and pending disposal of the OA.

4. In the reference 4th read above, the Hon'ble AP Administrative Tribunal in its final judgment in OA No. 5274/2000, dated 17.2.2004 has passed the following orders:-

Passing of the tests is incumbent on the probationer and not on the persons who were appointed under Rule 10(a)(i). Even though the applicants knew that they are required to pass the test during the probation, they need not pass the tests as they were not placed on probation. One of the pre-requisite condition for passing the tests is that a person should be placed on probation. In the present case, the applicants were not placed on probation when they were appointed under Rule 10(a) (i). They were placed on probation by an order of the 2nd respondent on 7.7.1994 from the date of their initial appointment while regularizing their services from the date of their initial appointment. The order was issued on 7.7.1994 whereas two years period was already over by the time the orders were issued and therefore, it is not understood as to how a person can pass the prescribed tests within the period of two years from his initial appointment when the orders requiring the applicant to pass the test within the period of probation was over by the time the orders were issued. Therefore, it cannot be considered that the applicant's period of probation was extended either by the Government or by the appointing authority.

And ordered that

"The applicants, are, therefore, entitled to their due seniority ignoring the fact that the unofficial respondents have passed the tests before they were placed on probation. The seniority list should be accordingly prepared and promotion considered in accordance with the seniority so finalized. Any order of instruction of the official respondents contrary to the above finding shall stand quashed".

5. The Commissioner of Horticulture, Andhra Pradesh, Hyderabad, in his letter 5th read above, has stated that, the AP Administrative Tribunal has given interim orders in all the O.As filed by the Horticulture Officers recruited during 1990, 1991, 1992, 1993 & 1994 who approached the AP Administrative Tribunal for restoration of their original date of regularization from the date of their joining in the Department. Keeping in view the above said AP Administrative Tribunal orders, the Commissioner of Horticulture, Andhra Pradesh, Hyderabad has requested to issue orders duly relaxing the Rule 24(c) and 16(h) of Andhra Pradesh State and Subordinate Service Rules in favour of Horticulture Officers who have not passed the required tests during the probation period and challenged the revised date of regularization and also who have passed tests belatedly irrespective of whether they have approached the AP Administrative Tribunal or not and the Government is alone competent and also to provide the natural justice to all the Horticulture Officers.

6. Government after careful examination of the entire matter, in consultation with Advocate-General, High Court of AP., have filed WP No.3171/2000 in the Hon'ble High Court requesting to set aside the orders of the AP Administrative Tribunal issued OA No.5274/2000, dt. 17.2.2004 and its batch cases.

7. The Hon'ble High Court in its judgment in WP No. 3171/2006 dt. 23.7.2008 in the reference 7th read above, have confirmed the orders of AP Administrative Tribunal in OA No.5274/2000 dated 17.2.2004 and also dismissed the WP No. 3171/2006 filed by the Government, which reads as follows:-

“The applicant is deemed to be a temporary appointee and cannot be as probationer in view of Rule 10(a) (iv) of 1962 Rules and therefore, the question of Rule 8 and Rule 10 of Special Rules to the case of applicant case does not arise, during that period”

“ In the instant case since the services of the applicant are regularized by proceedings dated 7.7.1994, he is to be treated as a person appointed on regular basis for all purposes. In such circumstances, passing of the requisite test by the applicant during the deemed extended period of probation, cannot result in losing his seniority as it was nowhere contemplated in the Rules of 1962. However, the effect would be that in terms of Rule 26(ii) of 1962, Rules which lays down that where the probation of a probationer is extended, his increment shall be postponed until he completes his probation satisfactorily, and upto the period for which his probation is extended. It is also traceable under the said rule that such postponement of increment shall not be treated as a penalty, but only as a condition of extension of probation and shall not have the effect of postponing future increments after he passed the prescribed tests or after he completes his probation satisfactorily.

In the circumstances, we do not find any infirmity in the impugned order passed by the Tribunal and the Writ Petition No.3171 of 2006 fails and it is accordingly dismissed”.

8. In the reference 9th read above, the Commissioner of Horticulture has requested to take necessary action on the above judgment and issue orders as deemed fit in the matter, so as to enable him to finalize the seniority of the Horticulture Officers. In the reference 10th read above, the AP Horticulture Officers' Association have also represented to implement the judgment of Hon'ble High Court orders dated 23.7.2008 in WP No. 3171/2008 and issue orders to the Commissioner of Horticulture, to finalize the seniority list of Horticulture Officers from 1990 onwards.

9. Government after careful examination of the entire matter, have decided to implement the orders of Hon'ble High Court dated 23.7.2008 in WP No. 3171/2006. Accordingly, the Commissioner of Horticulture, is directed to regularize the services of Horticulture Officers appointed during the period of 1990-1994 duly relaxing the Rule 16(h) of AP State and Subordinate Service Rules, 1996 and Rule 10 of AP Horticulture Service Rules, 1989, as a special case and also to issue orders fixing their seniority in the cadre of Horticulture Officers with effect from their original date of regularization. He is also requested to consider their notional promotion as Assistant Director of Horticulture with effect from the date of promotions working against the post of Assistant Director of Horticulture, without disturbing the selection list, duly following the procedure prescribed therein from time to time by the Government.

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10. The Commissioner of Horticulture, Andhra Pradesh, Hyderabad, shall take necessary further action in the matter immediately and furnish a compliance report to Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

DR.S.CHELLAPPA,
APC & PRL.SECRETARY TO GOVERNMENT,ATM.

To
The Commissioner of Horticulture, Andhra Pradesh, Hyderabad.
The Special Secretary to CM.
The P.S. to M(Agri. & Horti.)
The P.S. to APC & Prl.Secy. to Govt.,ATM.
The Registrar, AP High Court, Hyderabad.
SC/SF.

//forwarded by order //

SECTION OFFICER